[Despatch Abstract.]

Rural welfare Department 1952

Memo 5824 R.W IV/52.3.

dated 11.10.52

dwd

Sept

Memo R.W 3760 IV/52.4 30.5.52

30.5.52

10.5.52

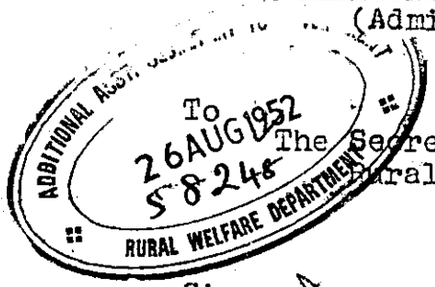
~~5824~~ R.W IV/52.3 ~~11.10.52~~

Office of the Commissioner for Hindu Religious and Charitable Endowments, (Administration) Department, Madras

Letter No. 31876/52-2- Lgl., dated 18-8-1952.

From

Sri T.M. Chinnaiya Pillai, M.A., B.L.,
Commissioner, Hindu Religious and Charitable Endowments,
(Administration) Department, M a d r a s-2.



To

The Secretary to Government,
Rural Welfare Department,
Fort St. George, Madras-9.

Sir,

Sub: The Madras Hindu Religious and Charitable Endowments Act 1951 - Section 103(j) - Interpretation by the High Court in C.R.P.No. 2167 of 1951.

O.P.No. 26/51 filed under section 84(2) of the Madras Act II of 1927 against the Board's decision that the Vishnumurti temple Cheemani, Kasaragod taluk, South Kanara District is not a public temple was pending in the District Court of South Kanara on the date of the coming into force of the Madras Hindu Religious and Charitable Endowments Act, 1951. The trustee was the first respondent and the Board was the second respondent. On 20-10-1951, the District Court held that in view of the definition of 'court' in thenew Act and section 103(j), it had no jurisdiction to hear the case and transferred the O.P. to the sub-Court. Against the said order, C.R.P. 2167/1951 was filed by the 1st respondent in the High Court. The High Court has held that the District Court's Order is wrong and has observed that in so far as there is no provision in the Act as to the Court which should deal with cases pending on the date of the coming int force of thenew Act there is an omission unnoticed by the Legislature.

2. The advocate appearing for respondents 1 to 8 in the C.R.P. has suggested that action may be taken to remedy the defect pointed out by the High Court. Though the Hindu Religious Endowments Board is mentioned in the Memorandum of grounds in the C.R.P. as the 9th respondent, no notice was received by this Department and hence this Department did not appear. Copies of the District Court's Order, the Memorandum of grounds in the C.R.P., the judgment of the High Court and the letters of

Sri A. Achuthan Nambiar, the advocate for respondents 1 to 8 in the C.R.P re forwarded. A similar order of the District Court South Kanara has been brought to the notice of Government in my letter No. 5170/51-Jdl., 3 dated 13-5-1952.

7-8 / (J)

I request that Government may be pleased to consider the observations made by the High Court and decide whether any action isnecessary.

3. In this connection I may say that after 30-9-1951, in several districts, suits and O.Ps under the old Act, have been transferred by District Courts to Sub Courts for disposal, while some of the District Courts (namely, Tanjore and Tiruchirapalli District Courts) continue to deal with the cases.

Yours faithfully,

Commissioner.

Enclosure: 4.

1-2 copies of advocates lettersdated 25-7-52 and dated 7-8-52.
3. Copy of District Court's order
4. Copy of High Court's judgment
5. Copy of Memo of grounds

MR/21-8-52.

A. Achuthan Nambiar, B.A., B.L.,
Advocate.

No.8-A, Barnarby Road,
Kilpauk,
M a d r a s-10.
Dated 25th July 1952.

3

To

Sri M. Seshachalapathy,
Advocate, High Court,
Madras-

Sir,

Re: C.R.P. No. 2167 of 1951 - In the matter of Sri Cheemani Kundiyakkal Vishnumurthi Temple, Kasargod taluk - South Kanara.

The abovetemple was declared to be a private institution by the Hindu Religious Endowmets Board in an enquiry under Sectinn 84 of the Old Act. Against that order my clients who are some of the trustees filed an O.P. (O.P.No. 26 of 1951) in the District Court, South Kanara for setting aside the orders and for declaring the said institution as a public temple. Pending that O.P. the new Act (Act XIX of 1951) came into force. The learned District Judge passed an order on the 20th of October 1951 holding that when the new Act came into force that these proceedings stood automatically transferred to the appropriate court and must now be deemed tobe pending before that court namely the Sub Court, Mangalore. The records were sent to Sub Court Mangalore and inthe Subordinate Court it was numbered as O.P. 98 of 1951. I am herewith enclosing a copy of the ~~xxx~~ order of the

P. T. O.

District Judge South Kanara. Against the said order of the learned District Judge one of the trustees who claimed the institution as his private temple filed the above C.R.P. to the High Court and his Lordship Justice Basheer Ahammad has on 17th July 1952 reversed the order of the District Judge. His Lordship has construed section 103 (j) of the new Act and held that under that section the District Judge has no jurisdiction to order the transfer as there is no provision similar to 103 (k) so far as proceedings pending in the District Courts are concerned. I have applied for the carbon copy of the orderin the C.R.P. I shall send you a copy of as soon as it is available. I need not inform you that persons in the position of my clients will be in a difficult situation unless the Act is suitably amended. I shall be glad if you will take the necessary steps in the matter and see that the defect in the Act is remedied so that my clients may continue the proceedings in a court of law.

Thanking you. Rest in my next.

Yours Sincerely.

Sd/ A. Achuthan Nambiar.

/True copy/

MR.

A. ACHUTHAN NAMBIAR, B.A., B.L.,
Advocate.

No. 8A Barnaby Road,
Kilpauk,
Madras-10.

5

Dated the 7th August '52.

To

The Commissioner for Hindu Religious
and Charitable Endowments,
Madras-

(2)

Sir,

Sub: C.R.P. No. 2167 of 1951 - High Court, Sri Chenmani Mundiyiekal Vishnumurthi Temple, Kasargod taluk, South Kara District.
Ref: Your Letter No. 31876/52-Lgl., dated 2-8-52.

As desired by you I am herewith sending a certified copy of judgment in C.R.P. No. 2167 of 1951 and also the copy of the Memorandum of grounds in the C.R.P. served on my client I request the necessary action may be taken as early as possible so that my clients may have the benefit of it. It is likely that the C.P. may be dismissed by the Learned District Judge on the ground that the Dt. Court has no jurisdiction to deal wit this uder the new Act.

Yours faithfully,

Sd/ A. Achuthan Nambiar,

/True copy/

In the Court of the District Judge of South Kanara.

Present: Sri P.T. Raman Nayar I.C.S. Dt. Judge.

Saturday, the 20th Day of October 1951.

Original Petition No. 26 of 1951.

Between:

1. Kunnutara Vadakka Veetil Ambu.
2. Kodakkadan Koman.
3. Kundakutiyan Krishnan.
4. Chennan Kannan.
5. Kodakkadan KoolekkaKoman.
6. Pilankoo Kannan.
7. KannaKannan.
8. Putherikka Ambu — Petitioners.

Vs.

1. C.P. Kunhambu Nair.
2. The Hindu Religious Endowments Board, Madras, represented by its Secretary Cathedral Post — Respondents.

Petition dated 5-3-51 under Section 84(2) of the Hindu Religious Endowments Act II of 1927 praying that the order of the 2nd respondent dated 20-11-50 passed in O.P. 457 of 1949 declaring the Sri Vishnumurthi Temple of Cheemam village, Kasargode taluk to be not a temple as defined under the Act, may be set aside, and fee declaring that the said institution is a public temple.

The petition coming on for hearing this day in the presence of Sri K.K.C. Nambiar Advocate and Sri G. Somashekar Rao, pleader for the petitioner, Sri B. Vaikunta Baliaga, and Sri S. Narasappayya pleaders for the 1st respondent, and Sri K.S. Hegde advocate for the 2nd respondent the Court passed the following:-

ORDER: Under the new Act (Act XIX of 1951) the jurisdiction to hear and determine the various suits and applications instituted under the old Act (Act II of 1927) is vested in other courts and authorities and the explanation to sanction 103 (j) of the new Act (which is proviso rather than an explanation) makes it quite clear that the proceedings cannot be continued here. Although the language employed is by no means explicit I think the effect of clauses (j) and (k) of the section 103 of the new Act is to create the fiction that these

pending proceedin s were instituted under the new Act before the appropriate court of authority. In other words, on the date the new Act came into force these proceedings stood automatically transferred to the appropriate court of authority and must now be deemed to be pending before that court or authority. All that remains for this court to do/the physical act of consigning the records to the court or authority before which the proceedings concerned must now be deemed to be pending and this will be done.

Pronounced in open court this the 20th day of October 1951.

Sd. P.T. Raman Nayar, Dt. Judge.

/True copy/

MR.21-8-52.

IN THE HIGH COURT OF JUDICATURE AT MADRAS.

Thursday, the Seventeenth day of July,

One thousand nine hundred and fiftytwo.

Present:-

The Honourable Mr. Justice Basheer Ahmed Sayeed.

Civil Revision Petition No. 2167 of 1951.

C.P. Kunhambu Nair	Petitioner	(Respondent 1)
1. Kunnuntara Vadakka Veetil Ambu.	)	
2. Kodakkadan Koman.	(	
3. Kundakutiyan Krishnan.	)	
4. Chennan Kannan	(	Respondents.
5. Kodakkadan Hoolekka Koman	)	(Petitioners 1 to 8 and
6. Pilankoo Kannan.	(	Respondent 2.)
7. Kanna Kannan.	)	
8. Putherikka Ambu.	(	
9. Hindu Religious Endowments Board, Madras representing by its Secretary.	)	

Petition under Section 115 of Act V of 1908, praying the High Court to revise the order of the District Court of South Kanara dated 20-10-1951 and made in O.P. No. 26 of 1951.

The petition coming on for hearing yesterday and this day, the Court delivered the following:-

J u d g m e n t.

Mr. M.K. Nambiar appearing for the petitioner is seeking to revise the orderof the learned District Judge of South Kanara whereby he declared that the pending proceedings in O.P. 26 of 1951 stood automatically transferred to the appropriate court or authority and that they should be deemed to be pending before that court or authority by virtue of section 103(j) and (k) of Act XIX of 1951, the new Hindu Religious Endowments Act.

O.P. No. 26 of 1951 was originally filed under Section 84(2) of the Hindu Religious Endowments Act, II of 1927 praying that the District Court might set aside the order of the Hindu Religious Endowments Board that the Vishnumoorthi Temple of Cheemeni village, Kasargod taluk was a private temple within the meaning of the Hindu Religious Endowments Act. When this

petition was pending before the learned District Judge of South Kanara the old Act was re-enacted as Act No. XIX of 1951. In the old Act section 9 (3) defined court as meaning the District Court. Under the new Act which came into operation on the 29th September, 1951 by a notification, Section 6(1) and (6) defined the court as the City Civil Court instead of the High Court and as sub Court instead of the ~~Dist~~ District Court. The effect of this new enactment is that instead of the District Court, as in the previous Act, the Sub Court became substituted for purposes of filing applicatio to set aside orders passed by the Hindu Religious Endowments Board. Similarly, instead of the High Court for purposes of proceedings within the City of Madras, the City Civil Court was substituted. Similarly under Section 103(j), instead of t Board the authority by or against whom any proceedings could be instituted in the court became the Commissioner of Religious Endowments instead of the Hindu Religious Endowments Boa d, as was the case under the old Act. The explanation to section 103 (j) of the new Act provides for the continuation of the proceedings so far as the High Court was concerned. Instead of the pending proceedings being continued in the High Court this provision states that they should be continued in the City Civil Court. Therefore, while there is a specific provision that proceedings now pending before the High Court should be continued in the City Civil Court, there is no correspondi provision in the new Act governing pending proceedings in th mufassal courts, apart from the substitution of the Sub Cour for the District Court, provided for by Section 6(6)(i).

Mr. Nambiar contends that in the absence of a specific provisions on similar lines as the one contained in the explanation to section 103 (j), pendin proceedings in the District Court cannot be transferred or cannot be deemed to

have been automatically transferred to the sub Court. There in no provision, according to him, in the whole of the new Act which authorikxses the District Judge to transfer these proceedings to the Sub Court. Simply because the District Court had been specifically mentioned in the old Act and in its place the Sub Court has been specifically mentioned, the general law, namely, the Civil ProcedureCode also would not entitle the District Court to transfer such proceedings to the sub Court. The provision in the new Act XIX of 1951 which has been relied upon by the learned District Judge, namely, section 103(j), only refers to the "continuation" of the pending proceedings by the "concerned authority." It states that instead of the Board, as was the case previously under this Act, it should be the Commissioner. The learned counsel for the respondents seeking to support the interpretation put upon this provision by the learned District Judge would seek to import into the meaning of this provision that the the continuation by the Commissioner in place of the Board also would mean continuation in the New Court that has been substituted for the old Court. A reading of the language of this sub clause (j) of section 103, in my opinion, does not warrant this extension of the meaning sought to be given it by thelearned District Judge or the learned counsel for the respondent in this Court. That section has reference only to suits, applications or proceedings taken by or on behalf of or against the Board under the provisions of the said Act and pendin at the commencement of that Act and provides that they may be continued by or on behalf of or against the Commissioner subject to the provisions and in so far as they are not inconsistent with this Act. All that seems to have been intended and aimed at by this Provision is only the substitution of the authority which is to continue the proceedings and that has been made the Commissioner instead of the Board. It does not have an reference to the "forum" b fore which these proceedin s have to continued. It might be that it might have been the intention

of the framers of this Act that the forum also would become substituted by this provision whereby it is provided that the pending proceedings shall be continued by the Commissioner instead of by the Board. But the actual language used does not warrant such interpretation so far as I could see. That intention does not appear to have been carried into effect by the language used. The learned counsel for the respondent would seek to emphasise upon the words subject to the provisions of and in so far as they are not inconsistent with this Act", to mean that the forum in which the continuation should take place also gets automatically substituted according to the new definition provided in this Court. do not think that I can agree to this interpretation as I think .t will be straining far toomuch the language of this Sub Clause j) of section 103 of the Act. As a matter of fact, while the explanation to 103 (j) provides that "all suits, and applications nder the said Act in the High Court in respect of religious nstitutions within the presidency-town and pending on the date of he Commencement of this Act, which would have been instituted in he Madras City Civil Court if this Act had been in force at the ime when such suit or applications were instituted shall be ontinued in, and disposed of by, the High Court" no such provi- ionhas been made in regard to the pending proceedings in the ourts in the muffasal, outside the presidency-town the effect eing that pending proceedings will have to be dealt with by the istrict Court only. This seems to be an obvious omission on the art of the legislature and it is not for this Court to go into he reasons or causes for such omission. When there is specific anguage available, that language alone has to be construed and nderstood and in interpreting and construing the language it is ot for the court to make up the lacuna that might have occurred i he process of enacting any legislation. This Court is concerned nly with express language found in any provision and not with ny possible intention behind it which is not expressed. illing up of any omission or making up any lacuna is the

business of legislation and it is not open to the court to go outside the strict language that is found in the provision that it is called upon to interpret and apply.

Mr. Nambiar has invited my attention to certain provisions in certain other Acts which have been made for the purpose of meeting situations of a similar kind. For instance in the Act passed by the Dominion Legislature to provide for the enlargemen of the appellate jurisdiction of the Federal Court in Civil case namely, Act I of 1948, in order to meet a similar situation in respect of pending proceedings before the Judicial Committee of the Privy Council, the legislature thought it fit to enact Section 5 specifically so as to provide for the transference of pending proceedings from the Privy Council to the Federal Court. There the section is to the following effect:

> "Every application to His Majesty in Council for special leave to appeal from a judgment to which this Act applies remaining undisposed of immediately before the appointed day shall on that day stand transferred to the Federal Court by virtue of this Act, and shall be disposed of by that Court as if it had been an application duly made to that Court for special leave to appeal from the said judgment."

This illustrates the necessity for a specific provision in situations like the one under consideration to meet the need for continuing pending proceedings in one court by their transference to another court. Even so, in an Act passed by the Parliament of India, viz., Act 38 of 1950, to provide for the extension of certain opium and revenue laws to certain parts of India, there is found a specific section viz., Section 3(a) setting forth modifications of State laws relating to income-tax investigation, in order to bring within the scope of the Investigation ~~Commission~~ Commission appointed by the Central Government investigation proceedings pending in Part B States and it is in the following terms:

"If immediately before the commencement of this Act there is in force in any part 'B' state other than Jammu and Kashmir any law (hereinafter in this section referred to as the 'state law') corresponding to the taxation on income (Investigation Commission) Act, 1947 (Act XXX of 1947) that law shall continue to remain in force with the following modifications, namely,

(a) all cases referred to or pending before the State Commission (by whatever name called) in respect of matters relating to taxation on income other than agricultural income shall stand transferred to the Central Commission for disposal."

again illustrates the necessity felt by the legislature to oduce specific provision for the transfer of pending proceed one court to anther when the forum gets altered by means of enactment. That no such thing has been done in the new Act of 1951 only goes to show that it is an omission which has one unnoticed by the legislative body which was responsible for he enactment.

Mr. Achuthan Nambiar appearing for the respondent ontends that the remedy for the aggrieved party in cases like his is provided by the provision in Section 106 of the new Act hich is to the effect that "if any difficulty arises in giving ffect to the provisions of this Act, the Government may, as occasion may require, by order, do any thing which appears to be ecessary for the purpose of removing the difficulty." He would suggest that the aggrieved party, namely, Mr. Nambiar's client, should approach the Government and get his grievane redressed. I do not think there is any force in this argument. That section is not intended for the purpose for which Mr. Achuthan Nambiar thinks it may be available. That section, in my view, appears to be intended only to remove difficulties in the administration of the Act in matters other than the strict interpretation of the provisions of the Act and their

applicability. It is first of all very doubtful whether a provision of this kind does not offend against the doctrine of delegated legislation. But it is not necessary for me to go into that question as it does not arise and is not relavant to the issue before me. However I do not think I can agree with the contention of the learned counsel for the respondent that this section gives the remedy to the aggrieved party in the present case. Even section 103(k) which only refers to any remedy by way of application, suit, or appeal which is provided by this Act which was available in respect of proceedings under the old Act pending at the commencementof thenew Act, and provides that such remedies should still be available as if the proceedings in respect of which the remedy is sought had been instituted under this Act." This again has no reference to the forum in which the remedy could be sought. It only applies to the remedy which was available under the old Act and which is being preserved under the new Act. Therefore in the view I have taken of the meaning and import of section 103(j) and the Explanation thereof, I do not think I can agree with the construction put upon this by the learned District Judge. In my view it cannot be said by reason of sub clause (j) and the explanation to it, that section 103 lays down that the pending proceedings stand automatically transferred to the new forum contemplated by the new Act, namely, the Sub Court, and that all that the District Judge is called upon to do is to resort to the physical act of transferring the papers concerned with the petition now pending. If that was really the intention of the legislaion, then it should have been made clear even as the provision in the Indian Independence Act of 1947, namely, section 15 has made it clear that all actions pending against the Secretary of State at the time when the Indian Independence Act was passed were to be dealt with by the High Commissioner for India in Britain. In such circumstances, it is difficult to make good the omission by an interpretation of section 103(j) or the explanation thereof.....

and consequently this revision petition has tobe allowed. I make no order as to costs.

(sd) V. Ramanujachari,

Assistant Registrar, Appellate Side.

(True copy)

Sd/ xx xx xx

Sub Assistant Registrar Appellate Side.

To

1. The District Judge, South Kanara, Mangalore (with records)
2. Carbon copy to Mr. M.K. Nambiar, Advocate (on payment)
3. Carbon copy to Mr. A. Achuthan Nambiar, Advocate (on payment).

/True copy/

MR.

MEMORANDUM OF CIVIL REVISION PETITION.

Under Sec. 115 C.P.C.

In the Court of the District Judge of South Kanara.

O.P. No. 26 of 1951.

IN THE HIGH COURT OF JUDICATURE AT MADRAS.

C.P. No . 2167 of 1951.

C.P. Kunhambu Nair .. Respondent-1 Petitioner.

Vs.

1. Kumhuntara Vedakka Veetil Ambu)
2. Kodakkudan Koman)
3. Kundakutiyan Krishnan..)
4. Chennan Kannan..)
5. Kodakkadan Mookekka Koman)
6. Pilankoo Kannan.)
7. Kannan Kannan..) Petrs.1 to 8 Respondents.
8. Putharikka Amba) and Respt. 2
9. Hindu Religious Endowments Board Madras, represented by the Secretary.)

The address for service of all notices and processes on the petitioner is th t of his Counsel Mr. M.K. Nabyar, Bar Association, High Court, Buildings, Madras.

The petitioner abovenamed beg to prosent this Memorandum of Civil Revision Petition to this Hon'ble Court against the order of the District Judge of South Kanara in O.P. No. 26 of 1951 dated the 26th of October 1951 on the following among ohter grounds:-

1. The order of the lower court is contrary to law and without jurisdiction.

2. The Lower court is wrong in its construction of Sec. 103 Cl(j) and (k). of the Madras Hindu Religious and Charitable Endowments Act 19 of 1951.

3. The lower court ignored the fact that Act 19 of 1951 as prospective and not retrospective and that

the institution of the proceedings in ~~xxx~~ a court cannot refer to past proceedings

4. The lower court is wrong in its view that the pending proceedings stood automotically transferred to the appropriate court.

5. The lower court has not appreciated the significance of the expression ~~xxx~~ 'may be continued' in Section 103 Cl(j)

6. Sec. 103 (j) does not justify the course adopted by the District Court.

Valuation:

above Rs.1000/-

Court fee paid thereon Rs.10/-

Sd/ xx xx xx

Counsel for petitioner.

Madras,

10th December '51.

/True copy/

19

Rural Welfare Deptt.(V)

MEMORANDUM NO. 58248 RW(V) | 52.3 DATED 11.10.. 1952.

Sub: The Madras Hindu Religious and Charitable Endowments Act, 1951 - Section 103(j) - Interpretation by the High Court in C.R.P. No.2167 of 1951.

pp 1-2 cf Ref: From the Commissioner, H.R.&.C.E.(Admn)Deptt. Lr.No.31876/52-2 Lgl. dated 18-8-52.

The decision of the High Court, Madras, in C.R.P. 2167 of 1951 is that the Courts in which the suits, applications, etc. instituted under the H.R.E.Act, 1926 were pending on the date of coming into force of the new H.R.&.C.E.Act, 1951 should continue to deal with them. The Government consider that this position cannot be said to be unsatisfactory and that the High Court's decision may, in the circumstances, be accepted. They do not, therefore, propose to amend the H.R.&.C.E.Act, 1951 to fill up the lacuna in Section 103(j).

p.le nf

SVR/10/52
ioner,
dmn) Deptt. Madras.

6.10.52.

9.10.52

9.10.52

Rural Welfare Department(V)

C.No.58248/52 pp1-2 f

From the Commissioner, H.R.&.C.E(Admn)Deptt. Letter No.31876/52-2 Legal dated 18-8-52.

--

H.R.&.C.E Act, 1951 - Section 103(j) - Interpretation.

Please see the Commissioner's letter on pp.1-2 c.f. The case in brief is as follows:-

Under the new Act "Court" has been defined (Section 6(1) & (2)) as the City Civil Court for religious institutions in the City and Sub-Court for institutions in the mufassal. The effect of this is that instead of the High Court as in the previous Act(H.R.E.Act,1926), the City Civil Court becomes substituted for purposes of filing applications to set aside orders passed by the H.R.E.Board and the Sub-Court becomes substituted for a District Cout in the previous Act for the same purpose.

Section 103(j) of the new Act which relates to the disposal of cases pending in the Courts at the time of the coming into force of the Act runs as follows:-

> " All suits, applications or proceedings taken by, or on behalf of, or against, the Board under the provisions of the said Act and pending at the commencement of this Act, may be continued by, or on behalf of, or against, the Commissioner subject to the provisions of, and in so far as they are not inconsistent with, this Act;
>
> Explanation: All suits and applications instituted under the said Act in the High Court in respect of religious institutions situated within the presidency-town and pending on the date of the commencement of this Act, which would have been instituted in the Madras City Civil Court if this Act had been in force at the time when such such suits or applications were instituted shall be continued in, and disposed of by, the High Court."

The question that has been raised is whether in view of the provisions contained in section 103(j) cases filed against the H.R.E.Board in the District Courts which are pending before the commencement of the Act would not get automatically transferred to the appropriate authority Viz Sub-Court. In one such case (O.P. No.26/51) the District Judge, South Kanara held that the case would get automatically transferred to the Sub-court. But in C.R.P. No.2167/51

filed by one of the petitioners against the orders of the District Judge in the High Court, the High Court reversed the District Judge's orders and held that section 103(j) did not empower the District Court to transfer the cases to Sub-Court and that there was lacuna in the Act in so far as no specific provision was made in the Act regarding the disposal of cases pending before the District Courts at the commencement of the Act. The Judgment of the High Court is on pp.9-16 c.f . The High Court has relied on the following points;- pp 9-16 cf

(1) that just as provision was made under Explanation to section 103(j) regarding the disposal ofthe cases pending before the High Court at the commencement of the Act no provision was made regarding the disposal of cases pending before the District Courts.

(2) that section 103(j) has reference only to suits, applications etc. taken by or on behalf of or against the Board under the proceedings of the Act and pending at the commencement of the Act which may be continued by or on behalf of or against the Commissioner subject to the provisions and in so far as they are not inconsistent with the Act and that the section does not have any reference to the "forum" before which these proceedings have to be continued; and

(3) that specific provisions were made in another enactments(Central Act I of 1948 etc) to meet situations of similar kind.

2. Now that the High Court has held that section 103(j) will not attract cases pending before the District Courts at the commencement of the Act the Commissioner requests whether action will be taken to amend the Act to make up the lacuna. It is also reported that after 30-9-51 in several Districts suits and O.Ps under the old Act have been transferred by District Courts to Sub-Courts for disposal while some of the District Courts, namely Tanjore and Tiruchirapalli District Courts continue to deal with the cases. It would seem that to p2 c.f.

make matters clear the Act may be amended suitably. It may also be mentioned in this connection that proposals for amending certain sections of the Act are already under consideration but they have been deferred pending disposal of the appeal proposed to be filed in the Supreme Court against the Judgment of the Madras High Court in Shirur Math etc. cases.

The case may be sent to Legal for remarks.

L.W.U.S-1246/52.1
13.9.52

ASSISTANT SECRETARY 14734 15 SEP 1952 LEGAL DEPARTMENT

Legal(Opinions-A) Departm

As pointed out by the District Judge and the High Court, the intention of the Legislature is not clear. Whereas the Explanation to section 103(j) specifically provides that proceedings pending before the High Court should be continued in the High Court, there is no corresponding provision in the new Act governing pending proceedings in the mofussil courts. The High Court has, therefore, held that the Courts in which the matters were pending when the Madras Hindu Religious and Charitable Endowments Act, 1951, came into force should continue to deal with them. This position cannot be said to be unsatisfactory. The Government may accept the High Court's decision as correct. In this view, an amendment of the Act as proposed will not be necessary. Instructions may be issued to the Commissioner for Hindu Religious and Charitable Endowments accordingly.

ADDITIONAL ASST. SECRETARY TO GOVERNMENT 64234 29SEP1952 RURAL WELFARE DEPARTMENT

Legal L.O.14734/52-1
25.9.52

S

Venkatachalapathy 25-9-52
K.N. Rajagopalan
R.W. Dept

Rural Welfare Deptt.(V)

Whereas Explanation to Section 103(j) of the H.R.&.C.E, Act, 1951 specifically provides that proceedings pending before the High Court should be continued in the High Court, there is no corresponding provision in the ~~new~~ Act governing the pending proceedings in the mofussil Courts. This is an obvious lacuna in the Act. The question whether it is necessary to amend the Act to fill up the lacuna has been examined in the notes on pp.1-3 ante. ~~With reference to the recent decision of the High Court in the matter as the Act stands with the lacuna, the Courts in which the matters were pending when the Act came into force, should continue to deal with them.~~ The High court having held that the Courts in which the matters were pending when the new Act came into force should continue to deal with them, Legal consider that as the position cannot be said to be unsatisfactory, the decision of the High Court may be accepted and that no amendment of the Act need be made. The view of Legal may be accepted, and the Commissioner may be informed accordingly. Subject to orders a draft memo is submitted for approval.

p. 3 ante

DNS

10.10.52

7.10.52

D. Sankaravadivelu

D. 10.52

K. Venkataramani 9/10/52

M. (RR)

SECRETARY TO GOVERNMENT
10 OCT 1952
RURAL WELFARE DEPARTMENT